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EUROPEAN CONVENTION ON HUMAN RIGHTS

The European Convention on Human Rights (ECHR; formally, the European Convention for the Protection of Human Rights and Fundamental Freedoms) is an international treaty that entered into force in 1953, drawing substantively on the Universal Declaration of Human Rights, which was adopted by the United Nations in 1948. It enshrines a range of basic human rights and fundamental freedoms to anyone subject to the jurisdiction of any member state of the Convention. The ECHR established the *European Court of Human Rights* (ECtHR), an entity based in Strasbourg mandated with the oversight and enforcement of the Convention, which makes the ECHR the first binding international treaty for the protection of human rights and fundamental freedoms in history. It is also unique in the way it provides legal protection for individuals against human rights violations, unusually assigning natural persons an independent and active role in the international law (which is normally dominated by states and their institutional representatives).

The rationale for putting such an international legal provision in place has been very much informed by the traumatic experiences of the Second World War in particular; it was, however, also very much inspired by the ambition to deflect any influences coming from political Communism in Europe, which can be seen in the many – albeit not very specific – references to the guiding principles of ensuring a functioning and effective political democracy. To ensure the Convention would find acceptance with all (then 12) members of the Council of Europe, the range of rights covered in the main body of the convention had to reflect a number of compromises. There was a general understanding that the Convention would be a living document, which could

later be amended in the form of additional protocols. Today, the rights and fundamental freedoms covered by the Conventions include the right to life, to protection against torture and inhuman treatment, to freedom and safety, to a fair trial, to respect for private and family life, freedom of expression (including freedom of press), thought, conscience and religion and to freedom of peaceful assembly and association.

The institutional context in which the Convention was drafted is the *Council of Europe*, so it is not to be confused with the more recent and comprehensive *Charter of Fundamental Rights of the European Union*, which was adopted in December 2000, and entered into force in December 2009 (following continued discussions about whether the European Union (EU) should have its own Bill of Rights or whether the EU should and could become part of the ECHR instead). As the EU Charter comprises all personal, civil, political, economic and social rights enshrined in the ECHR, its existence has also somewhat increased the importance of the Convention. This is not least reflected in the increasing number of cases and judgments dealt with by the ECtHR, which has reached over 18000 at the time of writing. Together, the EU Charter and the European Convention constitute a strong acknowledgment of the role of human rights and fundamental freedoms in the conception of democracy in Europe.

As of May 2015, there are 42 parties to the ECHR, thus encompassing a majority of the (now 47) members of the Council of Europe as well as all (now 28) member states of the European Union. In fact, any candidate for EU accession needs to be a signatory to the ECHR before starting negotiations over full membership. Membership of the Council of Europe is equally tied to general endorsement of the Convention. That said, not all parties to the treaty have in fact ratified all components of it: only 14 out of 42 signatories have ratified all substantive parts of the Convention (including all protocols). The United Kingdom, for instance, has signed but not yet ratified Protocol 4, which prohibits the imprisonment for debt and for the inability to fulfil a

contract. It has also not signed Protocol 7 (covering rights related to migration, criminal law and the equality of spouses), and, along with a number of other countries, such as Bulgaria, Denmark, France, Lithuania, Malta, Monaco, Poland, Sweden and Switzerland Protocol 12 (which prohibits discrimination). Despite these ongoing issues related to full ratification, the ECHR remains a centrepiece of European democracy that not least offers a crucial access point for individuals in their defence of human rights and fundamental freedoms.

CARMEN GEBHARD

See also:

Readings

Rainey, B. Wicks, E. and Ovey, C. (2014) *The European Convention on Human Rights* (6th edn). Oxford: Oxford University Press.

Greer, S. (2009) *The European Convention on Human Rights: achievements, problems and prospects*. Cambridge: Cambridge University Press.